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ABSTRACT

The government has attempted to exercise control over nonpublic schools in a number of different ways. This paper discusses the indirect controls imposed by various levels of government on these schools and the response of the courts to these controls. It is organized by court decisions related to zoning ordinances, civil rights, and employment relations. The basic argument is that diversity in educational systems benefits the nation, and that private schools should therefore be protected from regulatory attempts by government as they develop programs and methods different from public schools. Zoning ordinances imposed by local government against nonpublic schools have been upheld in some cases and overturned in others. In general, the courts have ruled against the nonpublic schools in matters related to civil rights. Church operated nonpublic schools have been protected from control of the National Labor Relations Board and have been exempt from paying unemployment compensation taxes. Although the nonpublic schools have been protected in some cases, they have as much to fear from indirect government controls as from those directly applied. (Author/TE)

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INDIRECT GOVERNMENT CONTROL OF NON-PUBLIC SCHOOLS: A REVIEW OF COURT DECISIONS

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Abstract

Government has attempted to excercise control over non-public schools in a number of different ways. This paper deals with the indirect controls imposed by various levels of government on these schools and the response of the courts to these controls. Zoning ordinances imposed by local government against non-public schools have been upheld in some cases and overturned in others. In general the courts have ruled against the non-public schools in matters related to civil rights. Church operated non-public schoolshave been protected from control of the National Labor Relations Board and been exempt from paying unemployment comensation taxes. While the non-public schools have been protected in some cases they have as much to fear from indirect government controls as from those directly applied.

INDIRECT GOVERNMENT CONTROL OF NON-PUBLIC SCHOOLS: A REVIEW OF COURT DECISIONS

Government has attempted to exercise control over non-public schools in a number of different ways. In some instances this control is very direct. Several states have statutes or agency regulations that are specifically applied to private schools. Other states have no such controls. There are in all states regulations which apply indirectly to non-public schools.

This paper is a report of research in progress dealing with the way government at various levels indirectly regulates or controls non-public schools. More specifically it reports the judicial response to such controls. The report at this point is in the form of an annotated bibliography of court decisions related to the topic with a summary at the end of each section.

The basic philosophical framework for this paper is that the nation is benefited by diversity in its educational delivery system. To that end private schools should be protected from regulatory attempts by government as they develop programs and methods that are different from the public schools. The courts have to a great degree protected the non-public schools from overt attempts by government to control them. The premise of this paper is that the courts should also provide protection from indirect controls.

ZONING ORDINANCES

Local governments exercise a number of different kinds of reg-

ulations over property. Zoning is one of these types of regulation. It may be defined as the separating or dividing of a geographical area or political entity into districts. It also includes the regulations of buildings in the nature and extent of their use. There are two general types of regulations coming under zoning ordinances. One deals with the structural or architectural design of buildings. The other has to do with the use that is made of buildings and property.

Zoning ordinances are enacted to limit, restrict, and regulate the use of private land for the purposes of the public interest. They can restrict or control the utilization, growth, and development of land so as to provide for the common good. Stability is one of the major purposes of zoning. It functions to protect the values of property and to preserve the character of a community by requiring uniform and/or limited use of the property within that area. The result is that land and buildings are put to the use for which they are best adapted. Safety is another consideration in zoning ordinances. Land and buildings can be constructed and used in a manner that will provide for the safety of the general population. These ordinances should result in promotion of public health and welfare of the entire community and protect the community from the dangers of fire, disease, congestion, or other problems which would be a detriment to the population at large.

As can be seen, zoning ordinances do restrict or impinge upon private rights of property and private and commercial interests in the use of that property. The theory of zoning tries to bal-

ance these private interests with the interests of the public so that the general welfare of the population at large is best protected.

Diocese of Rochester v. Planning Board 136 N.E. 2d 827

The Catholic Church in Brighton, New York applied for a permit to build a church and school. It was denied because it would adversely affect property values, decrease tax revenue, and affect neighboring property. The court reversed saying that such a decision was arbitrary and unreasonable.

City of Concord v. New Testament Baptist Church 382 A.2d 377

The city was granted a petition to enjoin the church from operating a day school. The church claimed that the school was part of its ministry. The state supreme court agreed and dissolved the injunction.

Greater New York Corporation of Seventh-day Adventists v. Miller 282 N.Y. S.2d 390

The court ruled that even though the school operated by a religious group, gave instruction in subjects taught in the public schools it was a "parochial" school "and not subject to restrictions for private non-profit schools."

Catholic Bishop of Chicago v. Kingery 20 N.E. 2d 583

The church appealed an ordinance which permitted public schools to be located in a residential section but prohibited private or parochial schools in such areas. The court found that the ordinance was not designed to promote public health safety morals or welfare and was a capricious invasion of property rights.

State v. Sinar 65 N.W. 2d 43

In contrast to the decision in Kingery, the court in this case upheld an ordinance that specifically excluded private high schools in a residential area while permitting a public high school. Public schools serve the public interest while private schools do not. Therefore, an ordinance that discriminates in favor of the public school is not arbitrary or unreasonable.

Creative Country Day School v. Montgomery County Board of Appeals 219 A. 2d 789

The ordinance required that a private non-parochial school must

obtain a special exception to build in a residential area but a parochial school did not. The court ruled that this differentiation was not arbitrary or unreasonable.

Zoning Regulations as Applied to Private and Parochial Schools Below the College Level 74 ALR 3d 14

This is a fairly exhaustive review of court decisions related to zoning ordinances affecting non-public schools.

A majority of court decisions have protected the non-public schools from unreasonable or overly restrictive zoning ordinances. However, in a few cases such as State v. Sinar, this protection has not been provided. In such instances, indirect controls are just as harmful to the school as those directly applied.

CIVIL RIGHTS

It is a basic necessity for a private school to be free to select its students in a manner that fits the unique purpose of the school. In this matter it is different from a public school which must accept all students within the attendance area. However, public policy in the United States opposes discriminatory practices based on race. This policy results in tension when private schools select their student body in a racially discriminatory manner.

Runyon v. McCrary 96 S.Ct. 2586

Black children were denied admission to a private school solely on the basis of race. The Supreme Court ruled that commercially operated non-sectarian schools could not deny admission on this basis because the civil rights statute provides that all persons shall have the right to make and enforce contracts.

Green v. Connally 330 F.Supp. 1150

Private schools that discriminate on the basis of race are not

entitled to federal tax exemption. Persons making a gift to such schools may not claim it as a deduction on the federal income tax returns.

Brown v.Dade Christian Schools, Inc. 556 F2d 310

The school denied admission to a black student solely on the basis of race. The court ruled that the school policy was social or political in nature and not based on religious belief.

Civil rights laws also affect the relationship between the school and its employees. Private schools claim that freedom in employment relationships assists them in providing a superior educational program. Regulation of employment practices will interefere with this purpose of the non-public school even if such regulation is based on civil rights issues.

Dolter v. Wahlert High School 483 F.Supp. 266

Parochial schools are not exempt from title VII of the civil rights act.

Dayton Christian Schools v. Ohio Civil Rights Commission 578 F.Supp. 1004

The Ohio Civil Rights Commission has a right to investigate claims of sex discrimination by a Christian school. Such investigatons do not suppress free exercise rights or result in excessive entanglement.

EMPLOYMENT RELATIONS

The relationship between a school and the teachers it employs is crucial to achieving the purpose for which the school operates. Private schools especially must be free to employ teachers whose characteristics beliefs and behaviors are consistent with the belief system espoused by the school. With the growing unionization of teachers it was only a matter of time until

the questions of unions for private and parochial schools was raised. Fortunately the supreme court has given a definitive answer in the case of parochial schools. The courts have also ruled in the matter of unemployment compensation.

N.L.R.B. v.Catholic Bishop of Chicago 99 S.Ct. 1313

The National Labor Relations Board decided that church operated schools had violated the National Labor Relations Act by refusing to negotiate with a Teachers Union. The Supreme Court held that there was no intent by Congress that such schools be under the jurisdiction of the National Labor Relations Board. If the National Labor Relations Board did have jurisdiction it would be an infringement of the religion clause of the first amendment.

St. Martin Evangelical Luthern v. South Dakota 101 S.Ct. 2142

Schools that are operated by a church or an association of churchs and have no seperate legal existance are exempt from unemployment compensation taxes.

SUMMARY AND CONCLUSION

Government at various levels has attempted to impose indirect as well as direct controls on the non-public schools. In some cases the courts have favored government controls and in other cases have protected the schools. In the matter of zoning ordinances the courts have ruled for both protection and control. In the matter of civil rights the government has had the upper hand. In employment relations church related private schools have recieved judicial protection.

Leaders of non-public schools should view this record with alarm. Direct controls by government on the private schools are widely publicized and public opinion as well as the courts usually favor the school. However many of the indirect controls go almost unnoticed by the general public. The real danger is that the non-

public schools will lose their freedom to operate in a unique manner by an indirect method of regulations. This will result in a loss to the private interests which these schools serve as well as to the nation which has benefited from the educational diversity they have provided.